# IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 424/2004
With CWP No. 650 of 2004
Date of Decision: 26.4.2007

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Ram Dayal …Petitioner.

-versus-

H.R.T.C. & Anr. …Respondents.

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Coram:

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting?* No.

For the Petitioner. : Mr. V.D. Khidta, Advocate.

For the Respondents :.Mr. H.S. Rawat, Advocate.

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**Rajiv Sharma, J. (oral):**

By way of common judgment, CWP bearing No. 424 of 2004 and CWP No. 650 of 2004 are disposed of. The facts in both the petitioners are common.

During the course of arguments Mr. V.D. Khidta, Advocate appearing on behalf of the workman has submitted that the petitioner will give up his claim to back wages, if the period from the date of retrenchment till re-engagement, is regularized for the purpose of seniority.

Mr. H.S. Rawat, Advocate appearing for respondents submits that, if the prayer of Mr. Khidta is allowed, it will result in disturbing the seniority list of helpers. Mr. H.S. Rawat has also urged that the award has been assailed by the Corporation by way of a CWP No. 650 of 2004 and the main ground taken before the Labour Court was that it was not a case of retrenchment but abandonment.

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* *Whether the reporters of the Local Newspapers may be allowed to see the Judgment?No.*

Mr. V.D. Khidta submits that the award whereby the retrenchment of the petitioner has been held void abinitio is in accordance with law and may not be interfered with.

I have perused the record of both the petitions and heard the parties.

The prayer of Mr. V.D. Khidta merits acceptance. If the workman is ready and willing to give up his back wages, there is no reason why in equity the period with effect from his retrenchment and re-engagement should not be counted for the purpose of seniority alone. As far as the submission of Mr.H.S. Rawat is concerned, no foundation has been laid on what basis the plea of abdonment was raised before the Labour Court. In the absence of any foundation laid by the Management that the workman has abandoned his job voluntarily, the award passed by the Labour Court cannot be faulted with. The Labour Court has neither committed any illegality nor any jurisdictional error.

The workman cannot be denied of legitimate right after his retrenchment has been quashed and set aside to get the seniority from the date of retrenchment till the re-engagement merely on the ground that it may disturb the seniority of others.

Consequently both the writ petitions are disposed of by modifying the award accordingly with following directions:

i) **The petitioner will be re-engaged forthwith as helper by the respondents.**

ii) **The period commencing the retrenchment of the petitioner till the date of re-engagement will be counted for the purpose of seniority alone**.

There shall be no order as to costs.

**(Rajiv Sharma), Judge.**

April 26, 2007
*Awasthi*